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DEPARTMENT OF COMMERCE

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Office of the Secretary

2 CFR Part 1329

15 CFR Part 29

Docket No. 0907271171-6029-03

RIN 0605-AA43

Implementation of OMB Guidance on Drug-Free Workplace Requirements

AGENCY: U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The U.S. Department of Commerce (Commerce) is removing its regulation implementing the prior government-wide common rule on drug-free workplace requirements for financial assistance, and issuing a new regulation to adopt updated Office of Management and Budget (OMB) guidance on the topic. This action implements OMB's initiative to streamline and consolidate into one title of the Code of Federal Regulations (CFR) all Federal regulations on drug-free workplace requirements for financial assistance. These changes constitute an administrative simplification that would make no substantive change in Commerce's policy or procedures for drug-free workplace.

DATES: This rule will be effective on [INSERT DATE THAT IS 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Gjohnso3@doc.gov, 202 482-1679.

SUPPLEMENTARY INFORMATION:

Background

The Drug-Free Workplace Act of 1988, Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq., was enacted as a part of omnibus drug legislation on November 18, 1988.

Subsequent to its enactment, Federal agencies issued a common interim final rule to implement the act as it applied to grants (54 FR 4946, January 31, 1989). The rule was a subpart of the government-wide common rule on nonprocurement suspension and debarment. The agencies issued a final common rule after consideration of public comments (55 FR 21681, May 25, 1990). The common rule was updated in 2003, to, among other things, account for changes in circumstances and to ensure the rule was written in plain language. (68 FR 66534, November 26, 2003).

In 2004, OMB established Title 2 of the CFR as the new central location for OMB guidance and agency-implementing regulations concerning grants and agreements (69 FR 26276, May 11, 2004). In conjunction with that action, OMB announced its intention to replace common rules with OMB guidance that agencies could adopt in brief regulations. OMB began that process by proposing (70 FR 51863, August 31, 2005) and finalizing (71 FR 66431, November 15, 2006) government-wide guidance on nonprocurement suspension and debarment in 2 CFR Part 180.

As the next step in that process, OMB finalized (74 FR 28149, June 15, 2009) government-wide guidance for policies and procedures to implement drug-free workplace requirements for financial assistance. The guidance requires each agency to replace the common rule on drug-free workplace requirements that the agency previously issued in its own CFR title with a brief regulation in 2 CFR adopting the government-wide policies and procedures.

On May 25, 2010, Commerce proposed new regulations to implement OMB's guidelines on drug-free workplace requirements (75 FR 29215). Specifically, Commerce proposed to take two regulatory actions: 1) removing its drug-free workplace common rule from 15 CFR Part 29; and 2) replacing the common rule with a regulation at 2 CFR Part 1329 adopting OMB's government-wide policies and procedures for a drug-free workplace. Commerce proposed, and this final rule enacts, no substantive change to either the Department's or the Government's policies on a drug-free workplace, but instead merely moves the location of the policy in the Code of Federal Regulations from one part to another.

Commerce received no comments on this proposed rulemaking, and now is making that proposed action final. There are no changes from the proposed rule, which is adopted in final form as it was proposed.

Executive Order 12866

OMB has determined this rule to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), at the proposed rule stage, the Chief Counsel for Regulation certified to the Chief Counsel for Advocacy at the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. No comments were received in response to the proposed rule. Accordingly, no regulatory flexibility analysis was required, and none was prepared.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104-4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects

2 CFR Part 1329

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

15 CFR Part 29

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Issued this 14th day of January 2016 at Washington, D.C.

Barry E. Berkowitz, *Director for Acquisition Management and Procurement Executive*

Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301 and 41 U.S.C. 701 et seq., the U. S. Department of Commerce proposes to add 2 CFR part 1329 and remove 15 CFR part 29 as follows:

Title 2—Grants and Agreements

PART 1329-REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

1. Add Part 1329 in Subtitle B, Chapter XIII, to read as follows:

PART 1329-REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

- 1329.10 What does this part do?
- 1329.20 Does this part apply to me?
- 1329.30 What policies and procedures must I follow?

Subpart A-Purpose and Coverage [Reserved]

Subpart B-Requirements for Recipients Other Than Individuals

1329.225 Whom in the Department of Commerce does a recipient other than an individual notify about a criminal drug conviction?

Subpart C-Requirements for Recipients Who Are Individuals

1329.300 Whom in the Department of Commerce does a recipient who is an individual notify about a criminal drug conviction?

Subpart D-Responsibilities of Agency Awarding Officials

1329.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E- Violations of this Part and Consequences

1329.500 Who in the Department of Commerce determines that a recipient other than an individual violated the requirements of this part?

1329.505 Who in the Department of Commerce determines that a recipient who is an individual violated the requirements of this part?

Subpart F- Definitions [Reserved]

Authority: 5 U.S.C. 301; 41 U.S.C. 701-707.

§1329.10 What does this part do?

This part requires that the award and administration of Department of Commerce grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701-707, as amended, hereafter referred to as "the Act") that applies to grants. It thereby--

(a) Gives regulatory effect to the OMB guidance (subparts A through F of 2 CFR part 182) for the Department of Commerce's grants and cooperative agreements; and

(b) Establishes Department of Commerce policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

§1329.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a--

- (a) Recipient of a Department of Commerce grant or cooperative agreement; or
- (b) Department of Commerce awarding official.

§1329.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 182.225(a)	§1329.225	Whom in the Department of Commerce a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.
(2) 2 CFR 182.300(b)	§1329.300	Whom in the Department of Commerce a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.
(3) 2 CFR 182.500	§1329.500	Who in the Department of Commerce is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
(4) 2 CFR 182.505	§1329.505	Who in the Department of Commerce is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.

- (c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, Department of Commerce policies and procedures are the same as those in the OMB guidance.

Subpart A-Purpose and Coverage [Reserved]

Subpart B-Requirements for Recipients Other Than Individuals

§1329.225 Whom in the Department of Commerce does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each Department of Commerce office from which it currently has an award.

Subpart C-Requirements for Recipients Who Are Individuals

§1329.300 Whom in the Department of Commerce does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each Department of Commerce office from which it currently has an award.

Subpart D-Responsibilities of Agency Awarding Officials

§1329.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR Part

1329, which adopts the Governmentwide implementation (2 CFR Part 182) of sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

Subpart E-Violations of this Part and Consequences

§1329.500 Who in the Department of Commerce determines that a recipient other than an individual violated the requirements of this part?

The Secretary of Commerce or designee determines that a recipient other than an individual violated the requirements of this part.

§1329.505 Who in the Department of Commerce determines that a recipient who is an individual violated the requirements of this part?

The Secretary of Commerce or designee determines that a recipient who is an individual violated the requirements of this part.

Subpart F-Definitions [Reserved]

Title 15—Commerce and Foreign Trade

PART 29 - [Removed and Reserved]

2. Remove and reserve Part 29.

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